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MAR 24 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
DeAndrea G. Benjamin, Family Court Judge

Trial Court Case No. 2001-CP-40-04203
Appellate Case No. 2014-001826

Edwin M. Smith, Jr.,

Appellant,

v.

David Fedor,

Respondent,

MOTION FOR SUBSTITUTION OF COUNSEL,
FOR LEAVE TO FILE OUT OF TIME,
AND TO HOLD APPEAL IN ABEYANCE

Pursuant to Rules 240 and 264 of the South Carolina Appellate Court Rules, Respondent, David Fedor, respectfully moves for substitution of counsel, for leave to file the initial brief and designation of matter of respondent out of time, and for an order holding this appeal and all deadlines in abeyance until the Court rules on "Respondent's Motion Rule 210(c)," previously filed. In support of this motion, Respondent states as follows:

Respondent was represented in the trial court in this matter by attorney Leo A. Dryer, Jr., and Mr. Dryer continued to represent Respondent in this appeal.

On November 20, 2014, Appellant served and filed his initial brief and designation of matter to be included in the record on appeal.

On December 18, 2014, Mr. Dryer filed a motion for extension of the deadline for filing the Respondent's initial brief and designation of matter, citing, *inter alia*, health issues. The Court of Appeals granted this extension request by order dated December 19, 2014, and established a new deadline of January 20, 2015.

On January 20, 2015, Mr. Dryer filed a second motion for extension of the deadline for filing the Respondent's initial brief and designation of matter, due to health issues specified therein, and stated that he had been hospitalized and in rehab since December 27, 2014. The Court of Appeals granted this extension request by order dated January 27, 2015, and established a new deadline of February 19, 2015. This order also stated that no further extensions would be granted absent extraordinary circumstances.

On February 10, 2015, Mr. Dryer filed "Respondent's Motion Rule 210(c)." This motion seeks to have item one designated by Appellant for inclusion in the Record on Appeal, "Confidential Settlement Agreement dated September 17, 2002," deleted from Appellant's designation of matter. The motion also seeks to have deleted from Appellant's initial brief all references to and argument based on this designated item. On February 20, 2015, Appellant filed a return to this motion. Mr. Dryer filed a letter addressed to the Clerk of the Court of Appeals on March 4, 2015, requesting a copy of the Court's response to the motion. The undersigned attorney is informed by the staff of the Court of Appeals that no order has yet been issued on the motion.

On Friday, March 20, 2015, Respondent received a telephone call from Mr. Dryer informing Respondent that, due to his deteriorating health and imminent death, Mr. Dryer will be unable to continue representing Respondent in this appeal. Mr. Dryer instructed

Respondent to pick up his file. The undersigned attorney communicated with the staff of the Court of Appeals on March 20, 2015, and learned that Mr. Dryer has not filed an initial brief and designation of matter on Respondent's behalf. Respondent obtained his file from Mr. Dryer's office on Monday, March 23, 2015. Respondent was informed on March 23, 2015, that Mr. Dryer is currently hospitalized and is not physically capable of signing a consent to this motion. Respondent signs this motion to evidence his consent to substitution of counsel, and he and the undersigned attorney respectfully move this Court for an order allowing the undersigned attorney to be substituted for Mr. Dryer as counsel for Respondent.

Pursuant to the Court's order of January 27, 2015, Respondent's initial brief and designation of matter to be included in the record on appeal were due to be served and filed on or before February 19, 2015. Whether due to Mr. Dryer's serious health issues or due to his belief that the pending Motion Rule 210(c) stayed the time limits for filing Respondent's initial brief and designation, the failure to serve and file these documents was through no fault of Respondent. No prejudice will result to Appellant by allowing Respondent to file his initial brief and designation out of time, and good cause exists for allowing late filing of these documents. Respondent and the undersigned attorney respectfully move this Court for an order allowing these documents to be filed out of time.

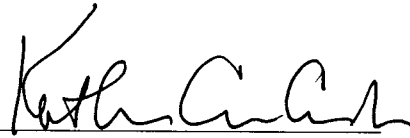
As mentioned above, the Motion Rule 210(c) is currently pending. It seeks to have item one of Appellant's designation of matter to be included in the Record on Appeal, "Confidential Settlement Agreement dated September 17, 2002", deleted from Appellant's designation. It further seeks deletion from Appellant's initial brief of all references to this document and all argument based on this document. If this motion is granted, it will require the filing by Appellant of an amended initial brief which deletes the references and argument that are the subject of the motion, and the amended initial brief to which Respondent will

respond will be different than the original version of Appellant's initial brief. Good cause exists for staying the time for filing Respondent's initial brief, so that Respondent and the undersigned attorney can know the version of Appellant's initial brief to which they should respond in Respondent's initial brief. No prejudice will result to Appellant if the time limits are stayed and this appeal is held in abeyance until the Court rules on Respondent's Motion Rule 210(c).

Accordingly, Respondent and the undersigned attorney respectfully move the Court to hold the appeal in abeyance and stay all time limits until the filing of an order by the Court ruling on the pending Motion Rule 210(c). If the motion is granted, the undersigned ask the Court to establish a deadline for the service and filing of Appellant's amended initial brief and designation, and to establish the deadline for service and filing of Respondent's initial brief and designation 30 days thereafter. If the motion is denied, the undersigned ask the Court to establish the deadline for service and filing of Respondent's initial brief and designation 30 days after the filing of such order denying the motion.

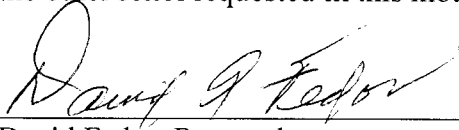
Extraordinary circumstances exist for the grant of all the relief requested by this motion, and no prejudice will result to Appellant therefrom. Respondent and the undersigned attorney respectfully move this Court to issue an order (1) substituting the undersigned attorney as counsel for Respondent in place of Mr. Dryer, (2) allowing the service and filing of Respondent's initial brief and designation of matter to be included in the record on appeal out of time, and (3) holding the appeal in abeyance pending the resolution of the outstanding Motion Rule 210(c).

Respectfully submitted,



Katherine Carruth Goode
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I consent to substitution of counsel and
the other relief requested in this motion:



David Fedor, Respondent

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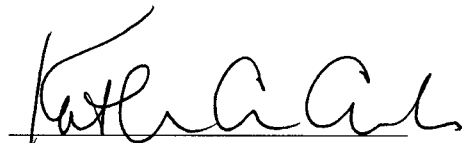
v.

David Fedor,

Respondent,

PROOF OF SERVICE

I hereby certify that I have served a copy of the Motion for Substitution of Counsel, for Leave to File Out of Time, and To Hold Appeal in Abeyance upon Appellant, by mail to Appellant's counsel, William M. Hogan and James R. Gilreath, The Gilreath Law Firm, P.A., P.O. Box 2147, Greenville, South Carolina 29602, and Edward L. Grimsley and Eric Wm. Ruschky, Grimsley Law Firm, LLC, P.O. Box 11682, Columbia, South Carolina 29211, on March 24, 2015.



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